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IN THE UNITED STATES DISTRICT COURTS
FOR THE EASTERN DISTRICT OF CALIFORNIA
AND THE NORTHERN DISTRICT OF CALIFORNIA
UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES
PURSUANT TO SECTION 2284, TITLE 28 UNITED STATES CODE

RALPH COLEMAN, et al.,

Plaintiffs,

v.

EDMUND G. BROWN JR., et al.,

Defendants.

2:90-cv-00520 LKK JFM P

THREE-JUDGE COURT

MARCIANO PLATA, et al.,

Plaintiffs,

v.

EDMUND G. BROWN JR., et al.,

Defendants.

C01-1351 TEH

THREE-JUDGE COURT

**DECLARATION OF DIANA TOCHE IN
SUPPORT OF DEFENDANTS'
RESPONSE TO APRIL 11, 2013 ORDER
REQUIRING LIST OF PROPOSED
POPULATION REDUCTION
MEASURES; COURT-ORDERED PLAN**

1 I, Diana Toche, declare:

2 1. I am the Acting Undersecretary of Administration and Offender Services for the
3 California Department of Corrections and Rehabilitation (CDCR). Previously, I served as the
4 Acting Director of the Division of Health Care Services for CDCR. I am competent to testify to
5 the matters set forth in this declaration and if called upon to do so, I would and could so testify. I
6 make this declaration in support of Defendants' Response to April 11, 2013 Order Requiring List
7 of Proposed Population Reduction Measures and Court-Ordered Plan.

8 2. Some of my current duties as Acting Undersecretary of Administration and Offender
9 Services include oversight of the following: Division of Correctional Health Care Services,
10 Division of Enterprise Information Services, Office of Labor Relations, Division of Facility
11 Planning, Construction and Management, Division of Administrative Services, Division of
12 Internal Oversight and Research; Office of Court Compliance, and Office of Internal Affairs.

13 **A. Elderly Parole**

14 3. Defendants will request that the Legislature consider early release for certain elderly
15 inmates determined to be at low-risk of recidivism. A precise estimate of the potential reduction
16 in population is not possible because this measure would require a change in state law and the
17 qualification criteria have not been established. However, as explained more fully in Jay
18 Atkinson's Declaration in Support of Defendants' Response to April 11, 2013 Order Requiring
19 List of Proposed Population Reduction Measures and Court-Ordered Plan, CDCR produced an
20 estimate using criteria based on the proposed legislation CDCR will request.

21 4. These criteria would establish threshold eligibility for elderly parole that must be
22 reviewed by the Board of Parole Hearings consistent with state law. The Board would determine
23 whether the offender meets criteria for eligibility, is at low-risk for recidivism or violence, and is
24 ready for parole.

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B. Medical Parole

5. Defendants will request that the Legislature consider expanding the medical parole program as mandated under Penal Code section 3550. Defendants will seek to modify the statute to remove the exclusion of offenders whose medically incapacitating condition existed at the time of sentencing. In addition, CDCR will seek amendment to Penal Code section 3550 to include offenders who suffer from a significant and permanent condition, disease, or syndrome resulting in the offender being physically or cognitively debilitated or incapacitated. CDCR will also seek modification to the statute to remove the requirement that the offender must have 24-hour care. If the Legislature amends the statute, offenders who become permanently physically or cognitively incapacitated will be eligible for medical parole.

6. Since this measure will require consideration by the Legislature, it is difficult to provide a precise population reduction estimate. However, we started with a baseline estimate of 500 currently eligible offenders, based on an estimate I received from Dr. Steven Tharratt of the California Correctional Health Care Services on April 17, 2013. Then, we applied a discount for overlap with other reduction measures such as elderly parole, along with other factors that will simulate the natural decrease in population, such as death, compassionate release or sentence recall, and parole. This results in an estimated decrease of the prison population by 150 by December 31, 2013.

7. Currently, the Board of Parole Hearings reviews the cases of eligible offenders meeting the threshold criteria for medical parole. After any change in the law, the Board of Parole Hearings would continue to review cases to ensure that only eligible offenders who are at low-risk for recidivism and violence will be medically paroled consistent with state law.

8. Our reduction estimate is staggered over time as implementation will be staggered. For example, those who are not reviewed this year by the Board of Parole Hearings will be reviewed next year. Moreover, as eligible cases are reviewed, there will be less and less eligible cases to review since most will be identified upon the enactment of statutory changes.

1 I declare under penalty of perjury under the laws of the State of California and the United
2 States of America that the foregoing is true and correct. Executed in Sacramento, California on
3 May 2, 2013.

4 /s/ Diana Toche

DIANA TOCHE

(original signature retained by counsel for Defendants)